

**Kate McGarry**

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**From:** Kate McGarry [kate@kmcgarrylaw.com]  
**Sent:** Friday, April 02, 2010 12:34 PM  
**To:** 'mh22@columbia.edu'  
**Subject:** Darry Durr Execution

**Importance:** High

Dr. Heath:

My client, Darryl Durr, has an April 20, 2010 execution date. He has joined in the *Cooey* litigation, which I know you have been involved in, since I have another client in the lawsuit. I was trying to determine if Darryl had any medical history that might present a problem with the lethal injection process in Ohio. In going through his medical records, that were provided to me by DRC, I discovered that he has an allergy to general anesthesia. Could this be a problem?

If it might be a problem, I would like you to look at his medical records, however, we are court appointed and so I will need to ask the court (Judge Gregory Frost) to appoint you to look at his medical records and render an opinion as to whether there might be a problem with the execution. The records that mention the allergy (to my untrained eye) consist of about 20 pages. His entire medical file is approximately 800 pages. If you could give me a ball park figure concerning costs, ie., your hourly rate, and the number of hours to review the records, submit an affidavit or oral opinion to the court and/or testify at a hearing, I will need that in order to request your appointment. Given the short time frame we are working under, the court may be inclined to take your testimony by telephone.

Please let me know if we are looking at a possible problem in this execution given the allergy, and if so, the cost of your services. Because we are on a shortened time frame, if you respond to this e-mail, I will attach your response to my motion. Thank you.

Kate McGarry  
McGarry Law Office  
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Glorieta, NM 87535  
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communication in error, please notify Kate McGarry at the McGarry Law Office immediately by telephone at 505-757-3989 and destroy all copies of this communication and any attachments. Thank you.

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**From:** Mark Heath [mh22@columbia.edu]  
**Sent:** Friday, April 02, 2010 1:18 PM  
**To:** Kate McGarry  
**Subject:** Re: Darry Durr Execution

Dear Ms. McGarry,

An allergic or other adverse reaction to to some component of a general anesthetic might present a serious problem for an execution by lethal injection, it would depend on the drug that precipitated the reaction and the nature of the reaction. I would need to look at the medical record to be able to know exactly what happened. You should know up front that my concern (if any) would likely relate to the "plan B" (intramuscular) component of Ohio's lethal injection procedure, as I am confident that the drug used in "plan A" is safe for intravenous injection (unless of course Mr. Durr has a specific allergic or other individual contraindication to thiopental). The current "plan B" is highly problematic and likely to be very embarrassing to Ohio if it is ever used, and if Mr. Durr's prior problem with anesthesia is relevant to "plan B" then that would make plan B yet worse (which is hard as it is already a pretty bad idea).

If the medical record file contains information regarding the anesthetic/surgical care then I would be willing to review it. I would not need to look at the full 800 pages, I expect that I could find and review the relevant sections in 2 hours at most. If you could point me to the key pages (basically the anesthesia record and surgical op note) it would be helpful and would speed things up considerably. If you need a written report I would need several more hours, depending on the complexity. If the case becomes more complicated then we should probably review the situation because in my experience these cases sometimes wind up consuming a lot of time.

At present I think you would be safe assuming less than 5 hours, I would charge \$350 per hour.

You are welcome to page me 917 899 2514 or call my cell 917 921 8081 if you would like to discuss this in person.

Best,

Mark Heath, M.D.

Quoting Kate McGarry <[kate@kmcgarrylaw.com](mailto:kate@kmcgarrylaw.com)>:

> Dr. Heath:  
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> joined in the Cooley litigation, which I know you have been involved  
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